



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/164378

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 2015, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to Medical Assistance (MA), a telephonic hearing was held on March 24, 2015.

The issue for determination is whether the agency met its burden to show that it correctly determined the petitioner's Medicaid Purchase Plan premium.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Ken Benedum, ESS

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. The petitioner has been receiving MA under the Medicaid Purchase Plan.
3. The petitioner's gross income is \$1477 per month in Social Security Disability Insurance (SSDI).
4. The county agency determined that the petitioner must pay a \$625 monthly premium to receive benefits under the Medicaid Purchase Plan effective March 1, 2015. See Exhibit 2.
5. For a one-person household in 2015, 150% of the federal poverty level is \$1,471.25; 250% of that level is \$2,452.08.

DISCUSSION

The petitioner is eligible to receive benefits under the Medicaid Purchase Plan (MAPP), which allows disabled persons to work and receive medical assistance if their income falls below 250% of the federal poverty level after excluding those amounts found in 42 USC 1382a (b). Wis. Stat. §49.472(3)(a). Those whose income exceeds 150% of the federal poverty level, whether earned or unearned, must pay a premium. Wis. Stat. §49.472(4)(b). That premium is 3½% of all earned income, but 100% of unearned income remaining after deducting \$20 plus an amount equal to state and federal SSI payments, which is currently \$836. Wis. Stat. §49.472(4)(a)1; *See Operations Memo No. 14-53*, available online at <https://www.dhs.wisconsin.gov/dhcaa/memos/14-53.pdf>. This combined deduction is known as the standard living allowance.

The federal poverty level is determined by the number of persons in the recipient's fiscal test group. Wis. Adm. Code, §DHS 103.04(9). The petitioner has one person in his fiscal test group. When determining whether the recipient's income exceeds 250% of the federal poverty level, agencies must allow a number of deductions. See *Medicaid Eligibility Handbook*, §26.5, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. Because the petitioner's income is below 250% of the federal poverty level even without these deductions, there is no need to review them. However, because his income puts him \$5.75 above the 150% FPL, he must pay a premium.

The workers are instructed to determine the premium in the following manner:

1. From gross monthly unearned income, subtract the following:
 - a. Special Exempt Income (15.7.2 Special Exempt Income).
 - b. Standard Living Allowance (39.4.2 EBD Deductions and Allowances).
 - c. Impairment Related Work Expenses (IRWE). For MAPP , use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.4 Impairment Related Work Expenses (IRWE)).
 - d. Medical Remedial Expenses (MRE). For MAPP, use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.3 Medical/Remedial Expenses (MRE))
 - e. Current COLA from January 1st through the date the FPL is effective in CARES for that year. 503, DAC, widow/widower disregards allowed in eligibility determinations can not be allowed in premium calculations.

The balance is the Adjusted Countable Unearned Income. This number may be a negative number.

2. From gross monthly earned income, subtract any remaining deductions from #1. If the result from #1 is a negative amount, change it to a positive number. The balance is the Adjusted Earned Income.

3. Multiply the adjusted earned income by three percent (.03).
4. Add the results of #3 and #1 together.
5. Compare the result from #4 to the Premium Schedule (39.10 MAPP Premiums) to determine monthly premium amount.

Medicaid Eligibility Handbook, §26.5.

It appears that the agency has correctly followed policy on determining whether or not petitioner owes a premium. The preponderance of the evidence shows that the only deduction he is eligible for is the standard living allowance. Accordingly, I must find that the agency has met its burden to show that it correctly determined his premium.

I add for petitioner's information that I am not able to change the premium policy or its effect on MAP members based on a fairness argument. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. The petitioner is free to request other MA programs and/or apply to the federal marketplace within the open enrollment period.

CONCLUSIONS OF LAW

The agency has met its burden to show that it correctly determined the petitioner's Medicaid Purchase Plan premium of \$625.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

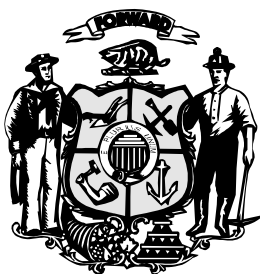
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of April, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 27, 2015.

Washington County Department of Social Services
Division of Health Care Access and Accountability